

PT 02-1

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

ST. PAUL LUTHERAN CHURCH)	A.H. Docket #	01-PT-0011
OF METROPOLIS)		
Applicant)	Docket #	00-64-05
)		
v.)	Parcel Index #	08-02-443-011
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Richard Kruger, Kruger, Henry, and Hunter for St. Paul Lutheran Church of Metropolis; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held at the State Regional Office Building, 2309 West Main Street, Marion, Illinois on June 29, 2001, to determine whether or not Massac County Parcel Index No. 08-02-443-011 qualified for exemption during the 2000-assessment year.

Reverend David J. Smith, pastor of St. Paul Lutheran Church of Metropolis (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcel during the 2000-assessment year; secondly, whether the applicant is a religious organization; and lastly, whether the parcel was in the process of adaptation or was in fact used by the applicant for exempt purposes during the 2000-assessment year. After a thorough review of the facts and law

presented, it is recommended that the exemption be granted for the period of April 17, 2000 through December 31, 2000. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Massac County Parcel Index No. 08-02-443-011 did not qualify for a property tax exemption for the 2000-assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 8)

2. On August 8, 2000, the Board of Review of Massac County recommended granting a partial exemption for the subject property from the period of April 17, 2000 through December 31, 2000. On January 11, 2001, the Department denied the requested exemption application finding that the property is not in exempt use in 2000. On January 20, 2001, the applicant timely requested the hearing. (Dept. Ex. No. 1)

3. The applicant acquired the subject property on April 17, 2000, by a warranty deed. (Dept. Ex. No. 1)

4. The subject property is across an alley from applicant's church complex. Located on the complex are applicant's church, parsonage, education building, and parking lot. The address of the subject property is 508 Ferry Street, Metropolis, Illinois. (Dept. Ex. No. 1)

5. Applicant's church has been located at the same place since 1866. It's address is Ferry at Sixth Street, Metropolis, Illinois. (Applicant's Ex. No. 2; Tr. pp. 12-13)

6. As part of the application package, the applicant submitted an affidavit of Ruben Bremer, Council President, which stated that "[T]he tentative plans are for the lot to be used as a flower garden." (Dept. Ex. No. 1)

7. At the time the property was acquired, a frame duplex rental building was located on it. The duplex was in deplorable condition and subject to vandalism. (Dept. Ex. No. 1; Applicant's Ex. No. 4; Tr. pp. 21-22, 38-40)

8. Applicant's first major concern after acquiring the property was to demolish the house, removing the eyesore. The demolition took place in early May 2000. Members of the applicant's congregation removed scrap metal and windows so debris would not fall in the street. A fence on two sides of the property was removed. The applicant hired a demolition firm to come and actually tear down the building and haul away the refuse. (Applicant's Ex. 4; Tr. pp. 24-26, 30)

9. In the spring of 2000, the applicant arranged to have the basement filled and the ground leveled. The lot was then seeded. (Applicant's Ex. No. 4; Tr. pp. 26-30, 35)

10. The applicant held its Vacation Bible School outdoor activities on the subject property in July 2000. Sunday School activities also took place on the property in the Spring and Fall of 2000, weather permitting. Prior to the purchase of the subject property, applicant had to hold these activities in its asphalt parking lot. (Tr. pp. 30-31, 40-42)

11. The applicant mows the property just as it maintains the other church grounds. (Tr. p. 32)

12. Applicant's plans are to replace the prior fence with a six-foot wooden stockade fence. Eventually, a sprinkler system will be installed and the property will be landscaped. (Tr. pp. 32-34, 36)

13. Meanwhile, the applicant continues to use the property for its outdoor activities. (Tr. pp. 34-37, 40)

14. The applicant has held two fund-raising luncheons for the landscaping project. (Tr. p. 33)

15. I take administrative notice of the exemption granted to the applicant pursuant to Docket No. 93-64-84. (Dept. Ex. No. 1)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Illinois Courts have consistently held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11(1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); Weslin Properties Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987), and Lutheran Church of the Good Shepherd of Bourbonnais v. Department of Revenue of State of Ill., 316 Ill.App.3d 828 (3rd Dist. 2000)

Lutheran Church of the Good Shepherd involved a religious organization that purchased two tracts of land adjacent to its worship facility. The tracts had been previously used for farming. During the taxable year at issue, the church decided not to plant crops on the land because it intended to use the property as an extension of its existing yard area. After the crops from the previous year were harvested, nothing was done on the property during the taxable year at issue, until the following August when weeds that had overgrown the property were mowed.

In November the property was tilled for grass seeding that took place the following year because of unfavorable weather conditions. The court, after deciding that a clearly erroneous standard of review was appropriate, found that the church had converted the property from agricultural to religious use when it elected not to plant crops, mowed the property, and tilled it. The court stated "the subject property was 'under going a process of change from the raw or natural state' and was being converted to use as additional church yard or recreational area. Mowing and tilling in 1997 were part of this process, as was the decision not to plant crops. This activity was more than mere planning and constituted actual physical use of the property." *Id.* at 833

I find the applicant herein has also performed activities that are more than mere planning and constitute actual religious use of the subject property. During the taxable year at issue, the applicant had the derelict building demolished, filled in the basement with dirt, had the property graded, had the broken down fences removed, planted grass on the property, and actually used it for religious purposes as part of its vacation Bible School and Sunday School programs.

I find that the applicant has shown sufficient adaptation of Massac County Permanent Parcel Index No. 08-02-443-011 to qualify for a property tax exemption under 35 **ILCS** 200/15-40 for the period of time that the applicant owned it.

It is therefore recommended that Massac County Permanent Parcel Index No. 08-02-443-011 be exempt from property tax for 71% of the 2000-assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
December 23, 2001